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11 TESLA, INC. DBA TESLA MOTORS, INC.

12
13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA

15 DEMETRIC DI-AZ, OWEN DIAZ AND
LAMAR PATTERSON

16 Plaintiffs,

17 v.

18 TESLA, INC. DBA TESLA MOTORS,
19 INC., CITISTAFF SOLUTIONS, INC.;
WEST VALLEY STAFFING GROUP;
20 CHARTWELL STAFFING SERVICES,
INC.; NEXTSOURCE, INC.; and
21 DOES 1-10, inclusive

22 Defendants.

Case No. 17-cv-06748-WHO

**DECLARATION OF PATRICIA M. JENG IN
SUPPORT OF DEFENDANT TESLA, INC.'S
OPPOSITION TO PLAINTIFFS' MOTION
FOR SANCTIONS PURSUANT TO FRCP
37(B)(2)(A)**

Date: February 19, 2020
Time: 2:00 p.m.
Courtroom: 2, 17th Floor
Judge: Hon. William H. Orrick

Trial date; March 2, 2020
Complaint filed: October 16, 2017

DECLARATION OF PATRICIA M. JENG

I, Patricia M. Jeng, declare as follows:

1. I am currently an attorney with the law firm Sheppard Mullin Richter & Hampton, LLP which serves as Defendant Tesla, Inc.'s ("Tesla") attorneys of record in the above-captioned matter. I am a member in good standing of the State Bar of California. I have personal knowledge of the facts set forth in this declaration and, if called as a witness, could and would testify competently to such facts under oath.

2. Attached to this declaration as **Exhibit A** is a true and correct copy of email exchanges with Plaintiff's counsel. In my email dated November 14, 2019, I noted that the Court's Order did not order the production of information for people "who had regular contact with elevators," people Plaintiff's identified in their initial disclosures, or information of individuals "contained in the emails" exchanged; and, I made clear in my correspondence that there has not been any list of individuals produced who worked "with or around plaintiffs."

3. Plaintiffs' Motion for Sanctions states that Tesla produced a list of individuals working at Tesla, but "presum[es] these individuals worked in close proximity with Plaintiff Di-Az." Plaintiffs' presumption is incorrect and the motion blatantly misrepresents the list (Exhibit 34 to Demetric Di-Az's deposition) as somehow being a list of individuals who worked "with or around" Plaintiffs produced at Di-Az's deposition. Neither party made any representation that this was a list of employees that worked "with or around Plaintiffs." In fact, Plaintiffs were aware that the list was not responsive to any discovery because when Plaintiffs' counsel explicitly asked about the list, then-counsel for Tesla confirmed "It wasn't requested." The only representation prior counsel made was that it was a list of individuals who were working generally at Tesla at the same time as Demetric – not in the same area, department, under the same manager/supervisors, in the same shifts, let alone "with or around" Plaintiffs.

4. On May 15, 2018, Defendant took the deposition of Plaintiff Demetric Di-az. Attached to this declaration as **Exhibit B** are true and correct copies of the excerpts of the deposition of Demetric Di-az ("5/15/18 Demetric Dep.").

5. Following compliance with the Court's October 3 Order, Plaintiffs sought to

1 expand the scope of the Order. Plaintiffs’ identified numerous individuals that they believed
 2 should have been produced because they reported to the same supervisor, were in the same
 3 department, and worked the same shift during the time that Diaz worked at Tesla – a broader
 4 scope that would include individuals who did not work with or around Plaintiffs. However, none
 5 of the individuals Plaintiffs identified in their post-Order emails fall within even Plaintiffs’
 6 criteria. After a diligent search and reasonable inquiry, I confirmed that the following individuals
 7 do not meet Plaintiffs’ aforementioned criteria: Ramon Martinez, Rothaj Foster, Israel “Zuniga,”
 8 Rashad Zaid, Devin Burkhart, “Froilan,” Yordano Ramirez, Hilda Navarro, Aron Dehardo or
 9 Deharto, Jesse Leite, Robert Hurtado, Huge Villesenor, Troy Dennis, Robert Dominguez, and
 10 Ramiel Younan. Zaid, Burkart, Froilan, Navarro, Hurtado’s names were not mentioned by
 11 Plaintiffs until this Motion – either during meet-and-confer or the September 30 Joint Discovery
 12 Dispute letter.

13 6. On May 22, 2018, Defendant took the deposition of Plaintiff Owen Diaz. Attached
 14 to this declaration as **Exhibit C** are true and correct copies of the excerpts of the May 22, 2018
 15 deposition of Owen Diaz (“5/22/18 Owen Dep.”).

16 7. On June 21, 2019, Defendant took the deposition of Plaintiff Owen Diaz. Attached
 17 to this declaration as **Exhibit D** are true and correct copies of the excerpts of the June 21, 2019
 18 deposition of Owen Diaz (“6/21/19 Owen Dep.”).

19 8. Attached to this declaration as **Exhibit E** are true and correct copies of the index
 20 page(s) of the December 14, 2018 deposition of Demetric Di-Az, for the “Y” and “R” pages of the
 21 deposition index.

22 I declare under penalty of perjury under the laws of the United States of America that the
 23 foregoing is true and correct.

24 Executed this 27th day of January 2020, at San Francisco, California.

25
 26 /s/ Patricia M. Jeng

Patricia M. Jeng